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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,609	01/11/2001	Uri Geller	YG-47-010111	8013

22712 7590 08/08/2007
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EXAMINER

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ART UNIT	PAPER NUMBER
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2623

MAIL DATE	DELIVERY MODE
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08/08/2007

PAPER

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AUG 8 2007
Technology Center 2600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/757,609
Filing Date: January 11, 2001
Appellant(s): GELLER, URI

Paul A Guss
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 27, 2007 appealing from the Office action mailed June 5, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,439,997	Brasseur	08-2002
2002/0032905	Sherr (in support of Official Notice- Claim 6)	3-2002
6,312,334	Yoseloff (in support of Official Notice- Claims 7 and 8)	11-2001
2004/0129472	Furet (in support of Official Notice- Claim 12)	7-2004

Adoption Solutions Website (adoptionsolutions.com), 1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 - 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brasseur et al (US 6,439,997) in view of the Adoption Solutions website (AdoptionsSolutions.com).

Regarding claim 1 and 16, Brasseur discloses a method of selecting contestants comprising providing a plurality of contestants, broadcasting profiles of the

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contestants, and awarding a contestant. Brasseur further discloses a communications network i.e. Internet for transmitting selections of the viewers (see fig 1), a broadcast headend facility comprising a system server 110 (fig 1) inherently comprising a file storage server for compiling the selections transmitted over the communications network for the plurality of contestants (col. 1 line 35 – col. 2 line 8, col. 3 line 55 – col. 4 line 13). Brasseur further discloses a viewer input device i.e. PC's and a television receiver for displaying the profiles of the contestants.

Brasseur fails to disclose parent-contestants, images of Parent-contestants and awarding one child available for adoption to the at least winning parent contestant.

The Adoptions Solutions Website teaches an internet based communication system in which parent-contestants can register for adopting a child. The Adoption Solutions website further teaches displaying images of the parent-contestants. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Brasseur to include the claimed limitations for the benefit of promoting child adoption by providing a child to most deserving parent contestant.

Regarding claims 2 and 17, the combination of Brasseur and the Adoptions Solutions Website discloses the claimed limitation, wherein the Adoption Solution Website discloses displaying, on a receiving unit, at least on image of a child available for adoption.

Regarding claim 3, the combination of Brasseur and the Adoptions Solutions Website disclose the claimed limitation, wherein the combination of Brasseur and the Adoptions Solutions Website discloses displaying images, and Brasseur discloses a function of time (time period between awards - see col. 2 lines 47 - 56).

Regarding claims 4 and 5, the combination of Brasseur and the Adoptions Solutions Website discloses the claimed limitation, wherein Brasseur discloses transmitting selections from a plurality of viewers to a server facility over a communications network and compiling said selections transmitted over the communications network for selecting contestants to remain in the pool (see col. 1 line 35 – col. 2 line 8, col. 3 lines 13 - 30, col. 3 line 55 – col. 4 line 13) and the Adoptions Solutions Website discloses parent-contestants. Brasseur further discloses transmitting comments (see col 3 lined 35 - 30).

Regarding claim 6, Brasseur discloses a viewer can submit comments, but fails to disclose the viewer's comment is extemporaneous narrative and/or pre-selected narrative. Official Notice is taken it would have been well known to provide extemporaneous narrative and/or pre-selected narrative to describe a second person known to a first person. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Brasseur and the Adoption Solutions website to include a viewer submitting comments which are extemporaneous narrative and/or pre-selected narrative to describe a person for the benefit of making it easier to select a contestant based on the knowledge of other people's experience with that person.

Regarding claims 7 and 8, the combination of Brasseur and the Adoption Solution website fails to disclose the claimed wherein the selections are supplemented by bonus points and the claimed wherein points are awarded to the parent-contestant based upon the performance of the specified games or tasks. Official Notice is take it would have been well known in game shows for contestants to win bonus points based on performance. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Brasseur and the Adoption Solutions website to include the claimed limitations for the benefit of making it easier to select a contestant or to select the most deserving contestant based on contestant' performance with respect to games or tasks.

Regarding claim 9, the combination of Brasseur and the Adoptions Solutions website discloses the claimed limitations, wherein Brasseur discloses wherein the contestants receiving the greatest number of selections is selected to remain in the pool (see col. 4 lines 1 - 6).

Regarding claims 10 and 11, Brasseur discloses the claimed wherein the selections are made intermittently or periodically and wherein the compiling is performed either intermittently of periodically (see col. 1 line 35 - col. 2 line 8, col. 3 lines 13 - 30, col. 3 line 55 – col. 4 line 13).

Regarding claim 12, the combination of Brasseur and the Adoption Solutions website fails to disclose the claimed wherein the viewers are presented with the opportunity to change their selections after a specified period of time and or the

occurrence of a specified event. Official Notice is taken it would have been well known enable a user to change their selection after a specified period of time and / or after the occurrence of an event for the benefit of providing a user with time to ensure the correct selection was made. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Brasseur and the Adoption Solutions website to include the claimed limitation for the benefit of providing a user with time to ensure a correct selection was made.

Regarding claims 14, 15 and 18, Brasseur discloses a PC and IV for displaying information (see fig 1). It is noted that graphical information is displayed by accessing a web site (see col. 3 lines 30 - 40) and that the PC is the input device.

Regarding claims 13 and 19 - 21, the combination of Brasseur and the Adoption Solutions Website discloses the claimed limitations, wherein Brasseur discloses a user surveillance system wherein the contestants are subject to continuous surveillance for a fixed time period by a film crew inherently having a portable surveillance device i.e. camera for distribution over the Internet (see col. 4 lines 22 - 39, col 3 lines 42 - 54).

Regarding claim 22, the combination of Brasseur and the Adoptions Solutions Website fails to disclose the claimed wherein the portable device is wirelessly coupled to the headend facility. Official Notice is taken it would have been well known to couple a camera wirelessly to a receiver for benefit of avoiding the use of wires. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention

was made to modify Brasseur to include the claimed limitation for the benefit of transmitting the data obtained from the film crew to the headend instantaneously without the use of a wired network.

(10) Response to Argument

In response to the appellant's arguments, the examiner respectfully disagrees that the rejection should be reversed. Only those arguments raised by the appellant pursuant to the particular issues on appeal have been considered and addressed by the examiner. Any further arguments regarding particular limitations not specifically argued or other reasoning regarding deficiencies in a prima facie case of obviousness that the appellant could have made are considered as having been conceded by the appellant for the basis of the decision of this appeal and are not being subsequently addressed by the examiner for the Board's consideration. Should the panel find that the examiner's position/arguments or any aspect of the rejection is not sufficiently clear or a particular issue is of need of further explanation, it is respectfully requested that the case be remanded to the examiner for further explanation prior to the rendering of a decision.

In the Appeal Brief filed with the Office on March 27, 2007, the appellant disputes the examiner's given rationale for combining the two references relied upon for the U.S.C. 103 rejection of Claims 1 through 22. Specifically, the appellant raises three objections to the given U.S.C rejection. First, the appellant disputes whether one skilled in the art would alter the television game show disclosed in Brasseur, in a way influenced by the disclosure of the AdoptionSolutions website to result in a child adoption game show. Second, the appellant claims that the stated reasons for

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combining the two pieces of prior art comes not from the prior art themselves but from the appellant's own specification. Third, the appellant argues that substantial evidence exists that noted experts on adoption oppose any combination of adoption and game shows and that, therefore, the claimed invention is non-obvious.

To support the assertions above, the appellant restates his arguments from the Arguments filed April 5, 2006 with the Office. The appellant argues that there is a lack of motivation to combined the two pieces of prior art and that no suggestion for combining can be found in the prior art. Instead the appellant argues that the motivation for combining these pieces of prior art can be found only in the appellant's own specification and, therefore, the examiner relied upon impermissible hindsight. The appellant reiterates that Brasseur deals solely with a game show for deciding a contest winner while AdoptionSolutions website is a website for connecting perspective parents with children ready for adoption and that no reason for combining the two references exists. The appellant further argue that specialists in adoption are fundamentally opposed to the appellants claimed invention and that this further buttresses their argument that no motivation for combining Brasseur and the website AdoptionSolutions exists in the prior art. To support this last argument, the appellant presents a Chicago Tribune article published April 28, 2004 where an adoption specialist characterizes an ABC program as "inappropriate and insensitive." Finally, the appellant attacks the examiner's stated motivation for combining the two pieces of prior art by stating that both references are complete in themselves and that, again, the examiner relied upon the appellant's own specification when suggesting the motivation to "promote child

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adoption by providing a child to the most deserving parent.” Finally, the appellant attempts to rebut the arguments found in the Office Action mailed June 5, 2006 by stating that the two pieces of art are non-analogous and that the opinions of the specialist cited in the Tribune article do give an accurate account of the prior art despite the fact that the article was published in 2004 and that it only cites on specialist (and mentions several specialists).

To the above arguments, the examiner replies that there is indeed sufficient reason for combining the two references, Brasseur and the AdoptionSolutions website without relying on impermissible hindsight. Brasseur deals primarily with a television and Internet game show (col. 1, lines 29-32). Brasseur discloses a game show with a format where contestants fill out profiles (Fig. 6) that users are able to view over the Internet (col. 4, lines 1-3, the contestants are also shown on television, col. 3, lines 42-54). The users are also able to vote for their preferred candidate via the website (col. 4, lines 1-3). The server hosting the website is able to tally the votes (col. 4, lines 4-6) and the winner is named live on the television show (col. 4, lines 6-13). Fundamentally, Brasseur is concerned with a method of choosing a winner from a group of contestants using electronic, third party voting open to viewers of the show. This schema can accommodate a variety of contestants and a variety of prizes (col. 7, lines 34-38); what is essential is communication means of the system (i.e. television game show with Internet facilitated viewer voting) and the nature of determining the prize (by tallying user votes). In an analogous art, the AdoptionSolutions website provides an Internet facilitated means of connecting perspective parents with adoption-ready children. The

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Adoption Solutions website is analogous to Brasseur because they both use the Internet as a means for interacting with users. Both provide profiles of perspective 'contestants' interested in an 'incentive' (such as an adoption-ready child in AdoptionSolutions' case). AdoptionSolutions is silent, however, on providing a structured method for determining how perspective couples and adoption-ready babies are matched. To one ordinarily skilled in the art, it would have been obvious at the time of the invention to use the Internet and television game show method disclosed in Brasseur to 'award' an adoption-ready baby to a perspective couple so that the child is given to the 'most deserving parent' (deserving, of course, in the opinion of the viewers). As for the evidence advanced by the appellant that specialists in the field of adoption deplore the use of game shows to make adoption decisions, the examiner wishes again to point out that the article was published a full three years after the appellants application was submitted to the office. This article in no way establishes what would have been obvious to one skilled in the art at the time of the invention because it was written well after said time. Also, the article deals directly with a specific 20/20 investigative show and, specifically, its promotional spots (see paragraph 3). This article is in no way meant to present a consensus on various methods of adoption and at least one couple is sympathetic to the process (see last two paragraphs of article). In light of these facts, this article does not establish the non-obviousness of the appellant's claims.

Finally, the examiner wishes to note that the Official Notices with respect to dependent Claims 6-8, 12 and 22 are not traversed by the appellant. Additional prior art supporting said Official Notices is provided in Section (9) of this Answer.

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In summary, the examiner has established a case for obviousness. In the Office Actions mailed October 5, 2005 and June 5, 2006, the examiner showed that all Claim limitations are met by the two references (which the appellant does not dispute in the brief). The examiner also discloses a motivation- to facilitate the adoption of a child to the most deserving parents. Lastly, the examiner has shown that the method of Brasseur is expansive and is quite capable of succeeding in awarding an adoption-ready child to perspective parenting couple via a television show with viewer voting. In view of the above arguments, the examiner maintains his rejection.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

DRO


July 30, 2007

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